

**REMARKS**

Applicant has not amended the claims in this response.

Claims 1-40 are currently pending in the application.

**Allowable Subject Matter**

Applicant acknowledges the Examiner's allowance of Claims 20 to 32 and the allowability of claims 4, 9 and 19 if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

**Double Patenting Rejection**

The Examiner rejected claims 1-3, 5-8, 10-18 and 33-40 under the doctrine of obviousness-type double patenting, as being unpatentable over claims 1-22 of U.S. Patent No. 6,651,835.

Applicant will file a Terminal Disclaimer if warranted, upon allowance of the claims, which addresses this rejection.

**Claims Rejections – 35 USC § 102 & § 103**

(A) Claims 1-3, 5-7, 10-18 and 33-40 are rejected under 35 U.S.C. § 102(b) as anticipated by or in the alternative under 35 U.S.C. § 103(a) being unpatentable over U.S. Patent Publication No. 2002/00114392 now US Patent No. 6,651,835 to Iskra (“Iskra”).

These rejections are respectfully traversed.

Of the claims rejected, claims 1, 14 and 33 are independent, with the remaining claims dependent thereon.

Claim 1 recites, among other things:

*a venting pathway extending between the inner surface of the outer tube and the outer surface of the inner tube, said venting pathway comprising a combination of a textured surface area and a longitudinal groove for allowing air to vent to atmospheric pressure during insertion of the inner tube within the outer tube.*

Claim 14 recites, among other things:

*said venting pathway comprising a combination of a textured surface area and a longitudinal groove.*

Claim 33 recites, among other things:

*wherein at least one of the outer tube or the inner tube further comprises a first longitudinal groove and a second longitudinal groove, said first longitudinal groove and said second longitudinal groove in fluid communication through a textured surface area extending therebetween during insertion of the inner tube within the outer tube to permit air to vent from between the outer tube and the inner tube to atmospheric pressure through a venting pathway extending to the open top of the outer tube.*

The MPEP section 2131 on Anticipation — Application of 35 U.S.C. 102(a), (b), and (c) [R-1] states: TO ANTICIPATE A CLAIM, THE REFERENCE MUST TEACH EVERY ELEMENT OF THE CLAIM

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053(Fed. Cir. 1987).

Applicant submits that Iskra fails to disclose at least the claimed feature of a groove longitudinal or otherwise.

In contrast Iskra discloses a roughened outer surface similar to that of the claimed textured surface area.

Thus Iskra does not anticipate claims 1, 14 and 33.

For these reasons applicants submit that claim 1, and dependent claims 2, 3, 4, 5-7, 10-13 as well as claim 14, and dependent claims 15-18, and claim 33, and dependent claims 14-40, are not anticipated by the Iskra reference.

Furthermore, the invention defined by claims 1, 14 and 33, is neither taught nor rendered obvious by Iskra. Iskra has no suggestion of the addition of a groove, longitudinal or otherwise.

In contrast, Iskra is directed towards the use of a roughened outer surface to provide a circuitous venting path which simultaneously allows air to escape from, while preventing a liquid from entering, a space between the inner and outer tubes.

In fact, Iskra teaches away from the incorporation of longitudinal grooves (see Col 2. lines 63 to Col. 3 line 18, shown below, emphasis added).

The cylindrically generated outer surface of the inner tube may be roughened to define an array of peaks and valleys. The maximum diameter defined by the peaks may be equal to or slightly greater than the inside diameter of the outer tube. Hence, the peaks on the roughened cylindrically generated outer surface of the flared top on the inner tube will provide secure engagement between the inner and outer tubes. However, the valleys between the peaks on the roughened cylindrically generated outer surface at the top of the inner tube will define circuitous paths for venting air trapped in the circumferential space between the inner and outer tubes at locations between the flared top of the inner tube and the closed bottom of the outer tube and to prevent liquid from entering the circumferential space between the inner and outer tubes. Liquid is prevented from entering the space between the inner and outer tubes because due to the pore size, viscosity and surface tension of the liquid. As a result, the container assembly achieves efficient nesting without longitudinal grooves and close dimensional tolerances and simultaneously enables evacuation of air from the space between the inner and outer tubes so that a vacuum condition can be maintained within the inner tube for an acceptably long time and prevents liquid from entering the space between the inner and outer tubes.

Accordingly, it is submitted that the assembly and method of assembly as defined by claims 1-3, 5-7, 10-18 and 33-40 are not taught or suggested by Iskra.

(B) Claims 8, 10 and 37-40 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Iskra.

This rejection is respectfully traversed.

Of the claims rejected, claims 8 and 10 are dependent on claim 1 and claims 37-40, are dependent on claim 33.

Iskra fails to disclose, teach or suggest the invention of claims 1 and 33 for the reasons as discussed above.

Thus, claims 8 and 10 being dependent on claim 1, and claims 37-40 being dependent on claim 33 are patentable over the cited reference.

### **Conclusion**

In view of the remarks herein, applicant submits the claims are patentably distinct over the prior art and allowable in form.

The Commissioner is hereby authorized to charge payment of any additional fees associated with this communication or credit any overpayment to Deposit Account No. 02-1666.

If the Examiner has any questions or comments relating to the present application, he or she is respectfully invited to contact Applicants' agent at the telephone number set forth below.

Respectfully submitted,

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